



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0074

IN THE MATTER OF:

Westwoods Development Co., LLC.

a Colorado Corporation

Harris Construction Management, LLC.

a Colorado Corporation

Dillon Companies, Inc.

d/b/a King Soopers, Inc.

a Kansas Corporation

Saunders Construction, Inc.

a Colorado Corporation

Respondents.

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolves the matter between the U. S Environmental Protection Agency v. Harris Construction Management, LLC. Therefore, this Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

May 25, 2004

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer



Printed on Recycled Paper

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. CWA-08-2003-0074

In the Matter of:)	
)	
Westwoods Development Company, LLC)	
a Colorado Corporation,)	
)	
Harris Construction Management, LLC)	
a Colorado Corporation,)	CONSENT AGREEMENT
)	
Dillon Companies, Inc.)	
dba King Soopers, Inc.)	
a Kansas Corporation,)	
)	
Saunders Construction, Inc.)	
a Colorado Corporation,)	
)	
Respondents.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Harris Construction Management, LLC, by its undersigned representatives, hereby consents and agrees as follows:

1. On October 9, 2003, Complainant issued a Second Amended Complaint alleging certain violations of the Clean Water Act ("Act"), § 301 (a), 33 U.S.C. § 1311(a). The Complaint proposed a civil penalty for the alleged violations of the storm water requirements specified in the Colorado Discharge Permit System ("CDPS") permit no. COR-030000.

2. Respondent admits the jurisdictional allegations of the Complaint but does not

admit the specific factual allegations or legal conclusions of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's employees, officers, directors, heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. On February 24, 2004, a Final Order was issued by Regional Judicial Officer Alfred C. Smith approving and incorporating by reference the Consent Agreement signed by Westwoods Development Co., LLC, Dillon Companies d/b/a King Soopers, Inc., and Saunders Construction, Inc., the other Respondents in this matter. This Consent Agreement resolves the claims as against Harris Construction Management, LLC.

6. The Clean Water Act authorizes the assessment of a civil penalty of up to \$27,500 per day, for each violation of the Act. 33 U.S.C. § 1319(g). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation; Respondent's prior compliance history of such violations; Respondent's culpability for the violation; Respondent's ability to pay; any economic benefit or savings gained

from the violation; and other factors that justice may require. In light of the statutory factors and the specific facts of this case, EPA determined that Respondent has an inability to pay the proposed penalty in the Complaint.

7. Respondent consents and agrees that not more than thirty (30) calendar days from the date of a signed final order in this matter, Respondent shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
- b.. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:
U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check shall be sent to:

Julie Orr, Environmental Scientist
NPDES Enforcement Unit (8ENF-W-NP)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, **interest accrues from the date of the final consent order, not the due date**, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

- f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount remaining of \$9,000 shall become immediately due and owing by Respondent.

8. The penalty specified in paragraph 6, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

11. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

12. Pursuant to 33 U.S.C. § 1319(g)(4), on August 3, 2003, public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

13. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

14. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

15. Each party shall bear its own costs and attorney fees in connection with this matter.

16. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

Westwoods Development Co., LLC, et. al. - Docket No. CWA-08-2003-0074

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**
Complainant.

Date: **5/20/04**

By: **SIGNED**
Carol Rushin, Assistant Regional
Administrator, Office of Enforcement
Compliance and Environmental Justice

Date: **5.20.04**

By: **SIGNED**
Elyana Sutin, Senior Enforcement Attorney
Alicia N. Hoegh, Enforcement Attorney

RESPONDENT

Date: **5/20/04**

By: **SIGNED**
Phillip S. Harris
Harris Construction Management, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **HARRIS CONSTRUCTION MANGEMENT, LLC., DOCKET NO.: CWA-08-2003-0074** was filed with the Regional Hearing Clerk on May 25, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Elyana Sutin and Alicia Hoegh, Enforcement Attorneys, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on May 25, 2004, to:

William B. Hayes
Registered Agent for
Westwoods Development Co., LLC
257 Jackson Street
Denver, CO 80202

Attorney for Harris Construction Management, LLC

Andrew C. Bubb, Esq.
Pelz and Associates, P.C.
1873 S. Bellaire Street, Suite 1401
Denver, CO 80222

Attorney for Dillon Companies, Inc. d/b/a King Soopers, Inc.

Daniel P. Murphy
Montgomery, Little & McGrew, P.C.
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111

Attorney for: Saunders Construction, Inc.

Paul D. Phillips
Elizabeth A. Mitchell
Holland and Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202-3979

Westwoods Development Co., LLC, et. al. - Docket No. CWA-08-2003-0074

and pouch mailed to:

Honorable William B. Moran
Administrative Law Judge (1900L0
U. S. Environmental Protection Agency
1200 Pennsylvania NW
Washington, DC 20460

May 25, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON MAY 25, 2004.**